

EXHIBIT A

Designation Run Report

Weiss_BenchTrial

Weiss, David 01-27-2021

Our Designations 00:23:56

Their Counters 00:04:14

Total Time 00:28:10



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Page/Line	Source	ID
8:21 - 9:5	Weiss, David 01-27-2021 (00:00:21) 8:21 Q. Good morning, Mr. Weiss. 8:22 A. Morning. 8:23 Q. Thank you for making the time today. I 8:24 appreciate it. 8:25 Where do you work? 9:1 A. At Knobbe Martens Olson & Bear. 9:2 Q. Is Knobbe Martens a law firm? 9:3 A. Correct. 9:4 Q. Are you a partner in that law firm? 9:5 A. Yes.	Weiss.1
9:6 - 9:11	Weiss, David 01-27-2021 (00:00:11) 9:6 Q. How long have you been an attorney at 9:7 Knobbe? 9:8 A. Well over 25 years. 9:9 Q. Are you the managing partner of the Los 9:10 Angeles office? 9:11 A. I am.	Weiss.2
22:15 - 22:22	Weiss, David 01-27-2021 (00:00:25) 22:15 Q. What does it mean for a patent application 22:16 to "go abandoned"? 22:17 A. It means that -- it can mean that you 22:18 didn't respond to an office action in a timely way. 22:19 You didn't pay a certain fee that was due. Those 22:20 are probably the two most common examples. 22:21 Q. And what is the effect of a patent 22:22 application going abandoned?	Weiss.3
23:19 - 23:22	Weiss, David 01-27-2021 (00:00:13) 23:19 A. So the prosecution will stop on the 23:20 application. And it will be marked as abandoned at 23:21 the patent office, and a patent will not issue from 23:22 it.	Weiss.4
23:23 - 24:4	Weiss, David 01-27-2021 (00:00:20) 23:23 Q. Have you ever intentionally allowed a 23:24 patent application to go abandoned? 23:25 A. Yes. 24:1 Q. In what circumstances have you done that? 24:2 A. At the direction of the client. It may be 24:3 that the technology is no longer being pursued by 24:4 the bite client.	Weiss.5

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24:10 - 24:13	Weiss, David 01-27-2021 (00:00:15) 24:10 Q. And when you have intentionally let a 24:11 patent application go abandoned, have you done that 24:12 by just failing to respond to office action? 24:13 A. The vast majority of the time.	Weiss.6
24:18 - 24:22	Weiss, David 01-27-2021 (00:00:19) 24:18 Q. Do you have a docketing system so that 24:19 patent lawyers would know when deadlines are due so 24:20 that they don't miss a date and let a patent 24:21 application go abandoned? 24:22 A. Yes.	Weiss.7
26:17 - 26:20	Weiss, David 01-27-2021 (00:00:09) 26:17 Q. You're aware that letting a patent 26:18 application go abandoned can be a basis for 26:19 malpractice, don't you? 26:20 A. Yes.	Weiss.8
26:21 - 26:24	Weiss, David 01-27-2021 (00:00:16) 26:21 Q. So let's discuss the systems that Knobbe 26:22 has to avoid lawyers missing deadlines and letting 26:23 patents go abandoned. Can you describe how that 26:24 system worked in 2011?	Weiss.9
26:25 - 27:3	Weiss, David 01-27-2021 (00:00:11) 26:25 A. We communicate office actions, patent 27:1 office communications that we receive with the 27:2 client, and we inform the client on the timing of 27:3 the response.	Weiss.10
28:4 - 28:8	Weiss, David 01-27-2021 (00:00:16) 28:4 Q. And is there an automatic 28:5 notification system that you have that notifies 28:6 patent lawyers of the upcoming deadlines in their 28:7 dockets? 28:8 A. There is.	Weiss.12
31:12 - 31:19	Weiss, David 01-27-2021 (00:00:23) 31:12 Q. So I take it -- and correct me if I'm 31:13 wrong, it was Knobbe's procedure in 2011, that you 31:14 would not just respond to an office action without 31:15 first getting authorized by the client; is that 31:16 correct? 31:17 A. In the large majority of the cases. There 31:18 may be clients that have given specific instructions	Weiss.13

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37:16 - 37:23	<p>31:19 to automatically respond, but that is an exception.</p> <p>Weiss, David 01-27-2021 (00:00:16)</p> <p>37:16 Q. When Knobbe's practice receives a</p> <p>37:17 notice of abandonment, was that a material patent</p> <p>37:18 office communication that gets forwarded to the</p> <p>37:19 client?</p> <p>37:20 MR. WEIL: You're talking about, again,</p> <p>37:21 general practice --</p> <p>37:22 MR. HADDEN: Yes.</p> <p>37:23 THE WITNESS: Yes.</p>	Weiss.15
39:2 - 39:14	<p>Weiss, David 01-27-2021 (00:00:57)</p> <p>39:2 Q. Going back to the general procedure where</p> <p>39:3 the patent application has been abandoned because of</p> <p>39:4 a failure to respond to an office action response.</p> <p>39:5 Does Knobbe have a practice of documenting the fact</p> <p>39:6 that the client was notified of the deadline and</p> <p>39:7 agreed to let it lapse?</p> <p>39:8 A. If a client told us to abandon the</p> <p>39:9 application, yes, we would make note -- an</p> <p>39:10 indication of that.</p> <p>39:11 Q. And how is that indication documented at</p> <p>39:12 Knobbe?</p> <p>39:13 A. We tell the docketing department to</p> <p>39:14 docket that --</p>	Weiss.16
39:16 - 39:18	<p>Weiss, David 01-27-2021 (00:00:05)</p> <p>39:16 THE WITNESS: To document that we received</p> <p>39:17 an instruction to allow the application to go</p> <p>39:18 abandoned.</p>	Weiss.17
39:20 - 40:1	<p>Weiss, David 01-27-2021 (00:00:23)</p> <p>39:20 Q. Okay. And when you tell the docketing</p> <p>39:21 department that the application has been -- that the</p> <p>39:22 client has agreed to let the application go</p> <p>39:23 abandoned, how is that noted in the docketing</p> <p>39:24 system? What artifact is created?</p> <p>39:25 A. I don't know. I've never gone back to</p> <p>40:1 look.</p>	Weiss.18
40:16 - 40:19	<p>Weiss, David 01-27-2021 (00:00:14)</p> <p>40:16 Q. It's a simple point, right? You docket</p> <p>40:17 these things so that you have a record to show that</p> <p>40:18 what you did was approved by the client, right?</p>	Weiss.19

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40:20 - 40:25	<p>40:19 A. Yes.</p> <p>Weiss, David 01-27-2021 (00:00:15)</p> <p>40:20 Q. Right. So there has to be some indication</p> <p>40:21 you can go back and look at as evidence that, yes,</p> <p>40:22 at this time, it was approved by the client to let</p> <p>40:23 this patent go abandoned and let the deadline lapse,</p> <p>40:24 right?</p>	Weiss.20
74:4 - 74:6	<p>40:25 A. Correct.</p> <p>Weiss, David 01-27-2021 (00:00:14)</p> <p>74:4 Q. Thank you, Mr. Weiss.</p> <p>74:5 Now, changing subjects. How did iKan come</p> <p>74:6 to be your client?</p>	Weiss.21
74:13 - 74:16	<p>Weiss, David 01-27-2021 (00:00:17)</p> <p>74:13 A. Eventually one of the inventors was</p> <p>74:14 referred to us, and we represented the inventor, and</p> <p>74:15 then they formed iKan Technologies. We transferred</p> <p>74:16 representation to iKan Technologies.</p>	Weiss.22
75:23 - 75:25	<p>Weiss, David 01-27-2021 (00:00:07)</p> <p>75:23 Q. For the time when Frederico Wagner was your</p> <p>75:24 prime contact at iKan.</p>	Weiss.23
77:9 - 77:11	<p>75:25 A. Yes.</p> <p>Weiss, David 01-27-2021 (00:00:09)</p> <p>77:9 Q. Were there other contacts that you</p> <p>77:10 dealt with at iKan during any period?</p>	Weiss.24
77:12 - 77:13	<p>77:11 A. I dealt with Sony Douer.</p> <p>Weiss, David 01-27-2021 (00:00:07)</p> <p>77:12 Q. Anybody else?</p>	Weiss.25
78:20 - 78:22	<p>77:13 A. Bill Adam.</p> <p>Weiss, David 01-27-2021 (00:00:10)</p> <p>78:20 Q. Let me ask you to look at Document 9 in</p> <p>78:21 your folder, which should be the privilege log that</p> <p>78:22 your counsel provided in this case.</p>	Weiss.26 D288.1
79:5 - 79:11	<p>Weiss, David 01-27-2021 (00:00:40)</p> <p>79:5 Q. Have you seen this before, Mr. Weiss?</p> <p>79:6 A. Yes.</p> <p>79:7 Q. What is included on this privilege log?</p> <p>79:8 A. Emails.</p> <p>79:9 Q. What emails?</p> <p>79:10 A. Emails between the client, emails with</p> <p>79:11 people at Freshub.</p>	Weiss.27

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79:14 - 79:19	Weiss, David 01-27-2021 (00:00:22) 79:14 So does this privilege log include all of 79:15 your privileged communications with iKan, or is this 79:16 limited to communications relating to the patents at 79:17 issue in this case? 79:18 A. It's limited to patents at issue in this 79:19 case.	Weiss.28
84:23 - 85:10	Weiss, David 01-27-2021 (00:00:48) 84:23 Q. Now, 15 is an office action in the 84:24 same 11/301,291 application. Do you see that? 84:25 A. Yes. 85:1 Q. And this is has a notification date of 85:2 6-6-2011. Do you see that? 85:3 A. Yes. 85:4 Q. Is that when you would've received this 85:5 from the patent office? 85:6 A. Within usually -- either that or within a 85:7 few days. 85:8 Q. And if you look on the next page, this is a 85:9 final rejection, correct? 85:10 A. Correct.	Weiss.29 D291.1 D291.1.1 D291.1.2 D291.2 D291.2.1
86:9 - 86:15	Weiss, David 01-27-2021 (00:00:26) 86:9 Q. Got it. Okay. And is the final rejection 86:10 like this the type of material patent office 86:11 communication you would've forwarded to the client? 86:12 A. Yes. 86:13 Q. Now, I'd ask you to look back, Mr. Weiss, 86:14 to the privilege log that your counsel produced, 86:15 which was Document 9.	Weiss.30 D288.1
86:18 - 86:19	Weiss, David 01-27-2021 (00:00:24) 86:18 Q. If you look in that privilege log at 86:19 entry -- 92. It should be on page -- it starts on	Weiss.31
86:20 - 86:23	Weiss, David 01-27-2021 (00:00:17) 86:20 Page 8. You see the entry 91 on the bottom of 86:21 Page 8 that is dated June 24th, 2011, and it's an 86:22 email from you to Frederico Wagner and Fabio 86:23 Zsigmond.	Weiss.32 D288.8.1 D288.8.2
87:3 - 87:7	Weiss, David 01-27-2021 (00:00:13) 87:3 A. Okay. I see it. 87:4 Q. So that's a communication that you had with	Weiss.33

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	87:5 two of the iKan inventors after you received this	
	87:6 final rejection, correct?	
	87:7 A. Yes.	
87:8 - 87:8	Weiss, David 01-27-2021 (00:00:04)	Weiss.34
	87:8 Q. Then if you look on the log at entry 92 on	
87:9 - 87:19	Weiss, David 01-27-2021 (00:00:37)	Weiss.35
	87:9 the next page at the top of Line 9, there's an entry	D288.9.1 -
	87:10 from -- where the author is Connie Kwon.	D288.9.2
	87:11 Do you see that?	
	87:12 A. Yes.	
	87:13 Q. When is Connie Kwon?	
	87:14 A. She is my assistant.	
	87:15 Q. This is an email with attachments that your	
	87:16 assistant sent to Frederico Wagner CC'ing some other	
	87:17 recipients on June 24th, 2011, after you received	
	87:18 the final rejection; is that right?	
	87:19 A. Yes.	
91:15 - 92:17	Weiss, David 01-27-2021 (00:00:59)	Weiss.36
	91:15 Q. -- what is document	D292.1
	91:16 16?	
	91:17 (Whereupon, Bates document	
	91:18 KNOBBE-000673-674 was marked as	
	91:19 Defendant's Exhibit 16 for identification,	
	91:20 as of this date.)	
	91:21 THE WITNESS: It's a communication from the	
	91:22 patent office.	
	91:23 BY MR. HADDEN	
	91:24 Q. And on the front it has notification date	D292.1.2
	91:25 of January 3rd, 2012. Do you see that?	
	92:1 A. I do.	
	92:2 Q. Again, is that roughly the date that you	
	92:3 would have received this?	
	92:4 A. Yes, within a few days.	
	92:5 Q. Thank you. And if we go to the next page	D292.2
	92:6 at the top, it says "Notice of Abandonment." Do you	D292.2.2
	92:7 see that?	
	92:8 A. I do.	
	92:9 Q. And it says, "Applicant's failure to	
	92:10 finally -- to timely file a proper reply to the	
	92:11 office letter mailed on June 6th, 2011."	

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	92:12 Do you see that?	
	92:13 A. I do.	
	92:14 Q. That's referring to that final rejection we	
	92:15 were just talking about that was Exhibit 15,	
	92:16 correct?	
	92:17 A. Correct.	
92:18 - 92:20	Weiss, David 01-27-2021 (00:00:11)	Weiss.37
	92:18 Q. And it's correct you did not respond to the	
	92:19 June 6th final rejection, correct?	
	92:20 A. Correct.	
93:2 - 93:15	Weiss, David 01-27-2021 (00:00:47)	Weiss.38
	93:2 Q. So you received this Notice of Abandonment,	
	93:3 January 3rd, 2012. If you look at the privilege log	
	93:4 at entry 97 -- and actually, let's go to 98, which	D288.9.1 - D288.9.4
	93:5 is on Page 9.	
	93:6 Do you see that?	
	93:7 A. Yes.	
	93:8 Q. Then there's an entry on Page 9, Number 98.	
	93:9 It's an email from you to Frederico Wagner and Fabio	
	93:10 Zsigmond.	
	93:11 Do you see that?	
	93:12 A. I do.	
	93:13 Q. Again, do you have any reason to believe	
	93:14 that Frederico Wagner or Fabio Zsigmond did not	
	93:15 receive that communication?	
93:17 - 93:18	Weiss, David 01-27-2021 (00:00:03)	Weiss.39
	93:17 THE WITNESS: No. I have no reason to	
	93:18 believe they did not receive it.	
94:13 - 94:16	Weiss, David 01-27-2021 (00:00:14)	Weiss.40
	94:13 Q. Just going back to the Notice	
	94:14 of Abandonment. Would the Notice of Abandonment be	
	94:15 a material patent office communication that you	
	94:16 would forward to the client?	
94:18 - 94:18	Weiss, David 01-27-2021 (00:00:01)	Weiss.41
	94:18 THE WITNESS: Yes.	
95:14 - 96:6	Weiss, David 01-27-2021 (00:00:55)	Weiss.69
	95:14 Q. Let's look at -- still in Exhibit 9 in the	
	95:15 privilege log. There is an entry 108 dated	D288.10 - D288.10.1
	95:16 October 6th, 2016, from you to Sony Douer, CC'ing	
	95:17 Connie Kwon.	

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	95:18 Do you see that?	
	95:19 A. I do.	
	95:20 Q. Is that the next communication you recall	
	95:21 regarding the abandoned patent application with?	
	95:22 A. I don't know what the subject matter is of	
	95:23 that email.	
	95:24 (Reporter clarification.)	
	95:25 THE WITNESS: Yeah. I don't recall the	
	96:1 subject matter of that email. I would have to look	
	96:2 at it.	
	96:3 BY MR. HADDEN	
	96:4 Q. But you testified that all the entries on	
	96:5 this log relate to the patents at issue in this	
	96:6 case, right?	
96:8 - 96:15	Weiss, David 01-27-2021 (00:00:23)	Weiss.70
	96:8 THE WITNESS: That's right. But	
	96:9 nonetheless, I still would want to read the email	
	96:10 before I would comment on its content.	
	96:11 BY MR. HADDEN	
	96:12 Q. Sure. But the only application that was in	
	96:13 existence relating to any of the patents in this	
	96:14 case in October of 2016 was the abandoned	
	96:15 application, right?	
96:17 - 96:19	Weiss, David 01-27-2021 (00:00:07)	Weiss.71
	96:17 THE WITNESS: Yes. We were handling other	
	96:18 patent matters, and I don't know if this could be	
	96:19 more than one patent matter.	
101:25 - 102:5	Weiss, David 01-27-2021 (00:00:16)	Weiss.42
	101:25 Q. Do you recognize Exhibit 17?	D293.1
	102:1 A. Yes.	
	102:2 Q. What is this?	
	102:3 A. This is a list of assets being assigned,	D293.1.1
	102:4 patent assets being assigned, from iKan	
	102:5 Technologies.	
102:6 - 102:7	Weiss, David 01-27-2021 (00:00:07)	Weiss.43
	102:6 Q. Did you prepare this document, 17?	
	102:7 A. Yes.	
103:3 - 103:19	Weiss, David 01-27-2021 (00:00:47)	Weiss.44
	103:3 Q. And was it your understanding that Sony	
	103:4 Douer was a representative of iKan Technologies,	

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103:5	Inc. in this transaction?	
103:6	A. Yes.	
103:7	Q. And was it your understanding that Sony	
103:8	Douer was the representative of IKan Holdings, LLC	
103:9	in this transaction?	
103:10	A. Yes.	
103:11	Q. And if you look on Page 9 is the signature	D293.2.1
103:12	of Sion Douer at that bottom, is that Sony Douer?	
103:13	A. Yes.	
103:14	Q. So his name is Sion, but he goes by Sony,	
103:15	correct?	
103:16	A. Correct.	
103:17	Q. Then there is a notarization of the	D293.3.1
103:18	signature on the next, Page 10. Do you see that?	
103:19	A. I do.	
103:23 - 105:1	Weiss, David 01-27-2021 (00:01:18)	Weiss.45
103:23	Q. If you look at the tables listing the	D293.1.2
103:24	patents that are being assigned in the patent	
103:25	applications here. Did you prepare those tables?	
104:1	A. Yes. Or they were prepared under my	
104:2	supervision.	
104:3	Q. And this assignment has three tables. Do	
104:4	you see that?	
104:5	A. I do.	
104:6	Q. And the first one is "Issued Patents." Do	D293.1.3
104:7	you see that?	
104:8	A. Yes.	
104:9	Q. And then the next one's "Pending	
104:10	Applications."	
104:11	Do you see that?	
104:12	A. I do.	
104:13	Q. And the next one is "Inactive, Abandoned,	
104:14	Expired Applications."	
104:15	Do you see that?	
104:16	A. I do.	
104:17	Q. So if you look in the Inactive, Abandoned	D293.2
104:18	Expired Applications table, at the top of Page 9, it	
104:19	includes systems and methods for scanning	D293.2.2
104:20	information from storage area contents, and the	
104:21	number is 11/301291. The date is 12-12-2005.	

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	104:22 Do you see that?	
	104:23 A. I do.	
	104:24 Q. Now, that's the abandoned application,	
	104:25 right?	
	105:1 A. Yes.	
105:2 - 105:10	Weiss, David 01-27-2021 (00:00:30)	Weiss.46
	105:2 Q. And below that is the another application	D293.2.3
	105:3 with the same title. It has a number 60/635122 and	
	105:4 filing date of 12-10-2004.	
	105:5 Do you see that?	
	105:6 A. I do.	
	105:7 Q. And that's the provisional application that	
	105:8 was filed before the regular application that was	
	105:9 abandoned, right?	
	105:10 A. Correct.	
105:11 - 105:18	Weiss, David 01-27-2021 (00:00:27)	Weiss.47
	105:11 Q. So in -- now, this document was filed and	D293.3.2
	105:12 notarized on December 4th, 2012.	
	105:13 Do you see that?	
	105:14 A. Yes.	
	105:15 Q. So on December 12th -- I'm sorry,	
	105:16 December 4th, 2012, you knew that the abandoned	
	105:17 application was abandoned, right?	
	105:18 A. Yes.	clear
108:25 - 109:1	Weiss, David 01-27-2021 (00:00:06)	Weiss.48
	108:25 Q. Did you prepare Exhibit 17 for Sony Douer	
	109:1 to sign, Mr. Weiss?	
109:3 - 109:4	Weiss, David 01-27-2021 (00:00:04)	Weiss.49
	109:3 THE WITNESS: Yes, I prepared it or it was	
	109:4 prepared under my supervision.	
109:18 - 109:22	Weiss, David 01-27-2021 (00:00:19)	Weiss.50
	109:18 And again, December 4th, 2012 is over a	
	109:19 year after the abandoned patent application went	
	109:20 abandoned, correct, Mr. Weiss?	
	109:21 A. Correct.	
	109:22 Q. Thank you.	
109:23 - 110:6	Weiss, David 01-27-2021 (00:00:46)	Weiss.51
	109:23 Now, after you listed the abandoned	
	109:24 application -- patent application as abandoned in	
	109:25 this patent assignment that was signed by Mr. Dour	

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	110:1 on December 4th, 2012, did you do anything in 2012	
	110:2 to revive that abandoned patent application?	
	110:3 A. No.	
	110:4 Q. And to your knowledge, did I Kan Holdings,	
	110:5 LLC, do anything to revive that abandoned patent	
	110:6 application in 2012?	
110:14 - 111:2	Weiss, David 01-27-2021 (00:00:45)	Weiss.52
	110:14 THE WITNESS: Oh. Not to my knowledge.	
	110:15 BY MR. HADDEN	
	110:16 Q. And similar question for 2013. So after	
	110:17 you listed the abandoned application as abandoned in	
	110:18 this assignment document that was signed December	
	110:19 4th, 2012, did you do anything to revive the	
	110:20 abandoned patent application in 2013?	
	110:21 A. No.	
	110:22 Q. Did you do anything to revive the abandoned	
	110:23 patent application in 2014?	
	110:24 A. No.	
	110:25 Q. Did you do anything to revive the abandoned	
	111:1 patent application in 2015?	
	111:2 A. No.	
115:6 - 115:15	Weiss, David 01-27-2021 (00:00:32)	Weiss.53
	115:6 Q. What is Exhibit 19?	D490.1
	115:7 A. This is a petition to revive the patent	D490.1.1
	115:8 application for application 11/301291.	
	115:9 Q. And if you look on the second page, there	D490.2
	115:10 is your signature for David N. Weiss; is that	D490.2.1
	115:11 correct?	
	115:12 A. Correct.	
	115:13 Q. It's dated January 20th, 2017; is that	
	115:14 correct?	
	115:15 A. Correct.	clear
115:16 - 115:21	Weiss, David 01-27-2021 (00:00:21)	Weiss.54
	115:16 Q. There's a statement that says, "The entire	
	115:17 delay in filing the required reply from the due date	
	115:18 of the required reply to the filing of a grantable	
	115:19 petition under 37 CFR 1.137(a) was unintentional."	
	115:20 Do you see that?	
	115:21 A. I do.	
117:6 - 118:13	Weiss, David 01-27-2021 (00:01:32)	Weiss.55

117:6 Q. Well, you know that Mr. Dour signed the
117:7 document you prepared on October -- on December 4th,
117:8 2012, that listed the abandoned patent as abandoned,
117:9 correct?

117:10 A. Yes.

117:11 Q. Okay. Now, let's talk about what you knew
117:12 rather than what Mr. Dour knew.

117:13 Given that you knew the patent was known to
117:14 be abandoned, at least by you, on December 4th,
117:15 2012, how could you tell the patent office that the
117:16 patent -- the entire period of abandonment was
117:17 unintentional?

117:18 MR. WEIL: Same objection. Same
117:19 instruction.

117:20 If you can answer the question without
117:21 disclosing privileged communications with your
117:22 client, you may do so; otherwise, you may not answer
117:23 the question.

117:24 THE WITNESS: The intent does not go to my
117:25 intent. It goes to intent of the applicant.

118:1 BY MR. HADDEN

118:2 Q. Sir, it's your testimony that if you knew
118:3 that the patent was abandoned and known to be
118:4 abandoned intentionally, you have -- doesn't
118:5 matter --

118:6 A. Wait, wait. You said .

118:7 Q. It doesn't.

118:8 A. No, that is not what I said.

118:9 Q. Okay.

118:10 A. I said the intent goes to the applicant.

118:11 The applicant unintentionally abandoned it. That's

118:12 what the issue is. The applicant --

118:13 Q. What is your basis --

118:16 - 118:18

Weiss, David 01-27-2021 (00:00:05)

Weiss.76

118:16 Q. Go ahead and finish your answer. Did you
118:17 finish?

118:18 A. That was my reply.

118:19 - 119:4

Weiss, David 01-27-2021 (00:00:38)

Weiss.56

118:19 Q. My question is, you are telling the

118:20 patent office that the abandonment was unintentional

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118:21 for the entire period, correct? That's what you are

118:22 telling the patent office in Document 19?

118:23 A. Correct.

118:24 Q. And -- but you knew, because you filed a

118:25 document the same day that showed it, that the

119:1 patent was known to have been abandoned, at least by

119:2 you, and was listed as abandoned in December 2012,

119:3 correct?

119:4 A. Correct.

119:5 - 119:16

Weiss, David 01-27-2021 (00:00:35)

Weiss.57

119:5 Q. So at least in your mind, December 2012,

119:6 you knew that the patent was abandoned, right?

119:7 A. Yes.

119:8 Q. Right. So there was no -- you didn't wake

119:9 up in 2017 and realize somehow you had made a

119:10 mistake by letting this patent go abandoned, right?

119:11 A. Correct.

119:12 Q. You knew it was abandoned in 2012, right?

119:13 A. I think I've answered that.

119:14 Q. And you knew it in 2013, in 2014 and 2015,

119:15 correct?

119:16 A. Correct.

121:3 - 121:7

Weiss, David 01-27-2021 (00:00:18)

Weiss.58

121:3 Q. So, Mr. Weiss, you not only knew in

121:4 December 2012 that the patent had been abandoned;

121:5 you provided your client, Sony Douer, the document

121:6 that specifically listed it as abandoned, and he

121:7 signed that under penalty of perjury, correct?

121:9 - 121:9

Weiss, David 01-27-2021 (00:00:00)

Weiss.59

121:9 THE WITNESS: Correct.

122:2 - 123:1

Weiss, David 01-27-2021 (00:01:27)

Weiss.61

122:2 Q. What is 21?

122:3 A. It is a grant of the petition to revive.

122:4 Q. If you look at the second page, which is

122:5 after the cover page, it has a "Decision On

122:6 Petition." Do you see that?

122:7 A. I do.

122:8 Q. Okay. And this decision is based on the

122:9 patent application we've been talking about that you

122:10 filed the petition to revive on in January of 2017,

D296.1 -
D296.1.1
D296.2

D296.2.2

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	122:11 correct?	
	122:12 A. Correct.	
	122:13 Q. And in the, I guess, third paragraph, the	D296.2.3
	122:14 last sentence says, "Accordingly, the application	
	122:15 became abandoned on September 7th, 2011. Notice of	
	122:16 Abandonment was mailed January 20th, 2012."	
	122:17 Do you see that?	
	122:18 A. Yes.	
	122:19 Q. That's consistent with your memory of what	
	122:20 happened?	
	122:21 A. Yes.	
	122:22 Q. And then two paragraphs down, the patent	D296.2.4
	122:23 office says, "This application has been abandoned	
	122:24 for an extended period of time."	
	122:25 Do you see that?	
125:3 - 125:12	123:1 A. I do. Weiss, David 01-27-2021 (00:00:44)	Weiss.62
	125:3 Q. So looking again	
	125:4 at document 21, the decision on the petition. In	D296.2.5
	125:5 the, I guess, in paragraph second to the last on the	
	125:6 second page where it says, "The U.S. Patent and	
	125:7 trademark office is relying on petitioner's duty and	
	125:8 candor of good faith accepting the statement that	
	125:9 the entire delay in filing the required reply from	
	125:10 the due date for the reply until the filing of a	
	125:11 grantable petition pursuant to 37 CFR 1.137 was	
125:17 - 125:23	125:12 unintentional." Do you understand what that meant? Weiss, David 01-27-2021 (00:00:14)	Weiss.63
	125:17 THE WITNESS: Yes, that the petitioner had	
	125:18 an obligation to be honest and with the patent	
	125:19 office in filing this.	
	125:20 BY MR. HADDEN	
	125:21 Q. And do you have an obligation to be honest	
	125:22 and truthful with the patent office?	
127:14 - 127:20	125:23 A. Yes, of course. Weiss, David 01-27-2021 (00:00:26)	Weiss.64
	127:14 Q. Okay. It goes on, and has in parentheses,	D296.2.6
	127:15 "Applicant obligated under 37 CFR 11.18 to inquire	
	127:16 into the underlying facts and circumstances when	
	127:17 providing the statement required by 37 CFR 1.137 to	

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	127:18 the U.S. Patent and Trademark Office."	
	127:19 Do you see that?	
	127:20 A. Yes.	
128:13 - 128:16	Weiss, David 01-27-2021 (00:00:11)	Weiss.65
	128:13 Q. That's you. You're the person representing	clear
	128:14 iKan before the patent and trademark office, right?	
	128:15 A. Yes. I'd want to have it in front of me.	
	128:16 But I have an obligation to do a full investigation.	
135:19 - 135:23	Weiss, David 01-27-2021 (00:00:16)	Weiss.74
	135:19 Q. Right. Did you -- as part of your	
	135:20 investigation, you told the patent office that the	
	135:21 entire period was unintentional. Did you check to	
	135:22 see if there was notation in the docketing system	
	135:23 that the abandonment was intentional?	
136:6 - 136:8	Weiss, David 01-27-2021 (00:00:02)	Weiss.75
	136:6 Q. Did you check the docketing system, Mr.	
	136:7 Weiss?	
	136:8 A. Yes.	
137:17 - 137:19	Weiss, David 01-27-2021 (00:00:07)	Weiss.66
	137:17 Q. Did you check for a notification in the	
	137:18 docket system if the abandonment was authorized?	
	137:19 It's a yes-or-no question. Did you do it?	
138:22 - 138:23	Weiss, David 01-27-2021 (00:00:03)	Weiss.67
	138:22 A. Yeah, I don't recall if I checked the	
	138:23 docket.	
189:13 - 190:1	Weiss, David 01-27-2021 (00:00:41)	Weiss.68
	189:13 Q. So Mr. Weiss, how many years have you been	
	189:14 practicing patent law?	
	189:15 A. A little over 25 years.	
	189:16 Q. And is it fair to say that in your 25 years	
	189:17 of practice, that you're familiar with the rules and	
	189:18 regulations of the patent office?	
	189:19 A. Yes. I'm reasonably familiar with them.	
	189:20 Q. And is it also fair to say that before you	
	189:21 file anything with the patent office, you do your	
	189:22 best to ensure that you follow all the rules and	
	189:23 regulations of the patent office?	
	189:24 A. Yeah. We always make sure we comply with	
	189:25 all the rules and -- and are always acting in	
	190:1 candor.	

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